

Jadu Yadav and Others

Vs

State of Bihar

Criminal Appeal Nos. 300-302 of 1986

(K. Jayachandra Reddy, G. N. Ray JJ)

25.08.1992

JUDGMENT

1. Heard learned counsel.

2. There are six appellants in these appeals. All of them are convicted under S. 302/149, I.P.C. and sentenced to undergo imprisonment for life. They were tried for the offence for causing death of the deceased Bhabhichan Yadav by being members of an unlawful assembly. The prosecution case is that on 17-5-79, the deceased was putting tiles on the roof of his house standing on plot No. 805. At that time these appellants came there armed with Lathis and Gandasas and surrounded the house. The informant P.W. 9, the father of the deceased and P.W. 7 at that time were weeding out the grass by spade in the sugarcane field. The deceased ran away to a distance of 300 yards from the house to a place where P.W. 9 and P.W. 7 were carrying on weeding operation. It is alleged that all the six appellants chased the deceased and caught the deceased in the sugar-cane field and they assaulted him with Lathis and Gandasa. The motive for commission of the injuries is said to be the litigation between the parties. The deceased, after receiving injuries, died on the spot. A report was given, investigation commenced and the dead body of the deceased was sent for post-mortem. P.W. 8, the doctor, conducted the post-mortem on 18-5-79 and he noticed nine injuries. Injury Nos. 1 to 7 were incised wounds and the injury on the head proved to be a fatal one. The other injuries, such as injury No. 8 was an abrasion 1" x 1/10" on the neck and injury No. 9, described as multiple brain scattered all over the back. Out of the witnesses examined in the case by the prosecution, P.Ws. 1, 2, 3, 7 and 9 claimed to be the eye-witnesses of the occurrence. The trial Court having examined the evidence of the eye-witnesses accepted the same and convicted all the appellants under S. 302/ 149, I.P.C. The appeal filed against the order of the trial Court was dismissed by a Division Bench of the High Court.

3. In this appeal, the learned counsel for the appellants submits that the witnesses are all interested parties and have given a fabricated version, and the overt acts attributed to by them to the accused do not fit in with the medical evidence, and there exists a conflict between the evidence of eye-witnesses and the medical evidence and, therefore, the appellants are entitled to 'benefit of doubt'.

4. We have perused the records, including the F.I.R. and the evidence of the eye-witnesses. In the earliest report it is also mentioned that all these six accused having found in an unlawful assembly chased the deceased. The description of the injuries given by P.W. 8, the doctor, would go to show that Lathis should have been used in the case. As already mentioned, seven out of nine injuries were incised, and as per doctor's view, could have been caused by sharp cutting weapon like, Gandasa. In

coming to injury Nos. 8 and 9, the doctor, no doubt, stated that there may have been some blunt object also. But if the assailants used the weapons in the manner as described by the witnesses the same could have been resulted also in contusions. It is common knowledge that abrasions also could be caused by coming into contact with rough sickle or even by falling on the ground. Injury No. 8 is only a small abrasion with a width of 1" x 1/10". The injury No.9, was due to fall on the rough surface. Admittedly, the occurrence had taken place in the field. Even otherwise, the prosecution version that three assailants armed with Lathis attacked indiscriminately is not supported by the medical evidence since we find superficial abrasions described in injury Nos. 8 and 9. Therefore, participation of the accused Nos. 1 to 3 becomes doubtful. The ages of the accused Nos. 1 to 3 are above 18 years. A reasonable doubt has arisen whether these three accused-appellants could cause injuries in the manner alleged by the eye-witnesses. So far as part played by appellant Nos. 4 to 6, viz. accused Nos. 4 to 6, it is consistently supported by the eye-witnesses and the same also has amply been supported by medical evidence and, hence, to that extent, the prosecution has fairly established its case. In the result, appellant/accused Nos. 1 to 3 are given the benefit of doubt and they are acquitted, and their conviction under S. 302/149, I.P.C. and the sentence of imprisonment for life thereunder, are set aside. If they are on bail, their bail bond shall be cancelled. In so far as accused Nos. 4 to 6 are concerned, they were also convicted under S. 302/149, I.P.C. The evidence is clearly to the effect that all the three accused used Gandasa and inflicted injuries, and they were convicted under S. 302/34, I.P.C., also. We accordingly, confirm the conviction of A4 to A6 under S. 302 /34, I.P.C. and confirm their sentence to imprisonment for life. The appeals are allowed in part in so far as appellants/ accused Nos. 1 to 3 are concerned and dismissed in so far as accused Nos. 4 to 6 are concerned as mentioned above. Order accordingly.

</html